

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 863

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO HEALTH CARE; ENACTING THE NONPROFIT HOSPITAL SALE ACT; ESTABLISHING PROCEDURES AND CRITERIA FOR REVIEW AND APPROVAL OF CERTAIN HOSPITAL ACQUISITIONS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Nonprofit Hospital Sale Act".

Section 2. DEFINITIONS.--As used in the Nonprofit Hospital Sale Act:

A. "acquire" or "acquisition" means the purchase or ownership by a person of twenty percent or more of the assets, operations or business of a hospital owned by a nonprofit corporation, whether by sale, purchase, merger, conveyance, transfer, lease, gift, disposition or otherwise,

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 or the transfer of control, responsibility or governance of
2 twenty percent or more of the assets, operations or business
3 of a hospital owned by a nonprofit corporation to another
4 person or that results in the acquiring person holding a fifty
5 percent or greater interest in the ownership of a nonprofit
6 hospital;

7 B. "department" means the department of health;

8 C. "nonprofit hospital" means a general or acute
9 care or specialty hospital licensed by the department that is
10 owned or operated by a person exempt from federal income tax
11 pursuant to Section 501(c)(3) of the federal Internal Revenue
12 Code of 1986;

13 D. "person" means an individual, corporation,
14 partnership, association, joint venture, stock company,
15 insurance company or other legal entity that is organized on a
16 for-profit or pecuniary basis; and

17 E. "successor nonprofit organization" means either
18 an existing or new tax-exempt charitable organization
19 operating pursuant to Section 501(c)(3) of the federal
20 Internal Revenue Code of 1986 that is subject to the
21 restrictions and limitations that apply to private foundations
22 pursuant to Sections 4941 through 4945 of the federal Internal
23 Revenue Code of 1986.

24 Section 3. NONPROFIT HOSPITAL ACQUISITION-- APPLICATION
25 FILING-- APPROVAL REQUIRED. --

underscored material = new
[bracketed material] = delete

1 A. No person shall acquire a nonprofit hospital
2 without first applying for and receiving the approval of the
3 attorney general pursuant to the Nonprofit Hospital Sale Act.

4 B. The nonprofit hospital shall submit an
5 acquisition application to the attorney general and the
6 department in a format provided by the attorney general. The
7 application shall include:

- 8 (1) the name of the seller;
- 9 (2) the name of the purchaser or other
10 parties to the acquisition;
- 11 (3) the terms of the proposed acquisition or
12 agreement;
- 13 (4) the consideration to be paid;
- 14 (5) a copy of the acquisition agreement;
- 15 (6) a valuation report prepared by an
16 independent expert or consultant;
- 17 (7) a health impact analysis prepared by an
18 independent expert or consultant pursuant to the criteria set
19 forth in Section 7 of the Nonprofit Hospital Sale Act; and
- 20 (8) any other information the attorney
21 general determines is required consistent with the provisions
22 of the Nonprofit Hospital Sale Act.

23 C. A copy of the application and copies of all
24 additional related materials shall be submitted to the
25 department and to the attorney general at the same time.

underscored material = new
[bracketed material] = delete

1 Applications and all related documents shall be public records
2 subject to all provisions of the Inspection of Public Records
3 Act and shall be made available at the offices of the attorney
4 general, the department and the nonprofit hospital.

5 D. If after receiving an application the attorney
6 general determines that the application is incomplete, the
7 attorney general may return the application to the applicant
8 or may request additions or changes to the application. All
9 deadlines are suspended during the time an application is
10 incomplete. Otherwise, all computations of time shall be
11 governed by the Rules of Civil Procedure for the District
12 Courts.

13 Section 4. APPLICATION REVIEWS BY ATTORNEY GENERAL AND
14 DEPARTMENT OF HEALTH. --

15 A. Within five business days after receipt of a
16 completed application, the attorney general shall publish
17 notice of the application in a newspaper of general
18 circulation in the service area of the hospital once per week
19 for two weeks. In addition to this public notice, the
20 attorney general shall notify by mail any person who has
21 requested notice of the filing of applications pursuant to the
22 Nonprofit Hospital Sale Act. The notice shall state that a
23 completed application has been received, state the names of
24 the parties to the agreement and describe the contents of the
25 application.

underscored material = new
[bracketed material] = delete

1 B. Within ninety days of the receipt of a
2 completed application, the attorney general shall notify the
3 nonprofit hospital in writing of the decision either to
4 approve the acquisition, with or without any specific
5 conditions or modifications, or disapprove the acquisition
6 subject to the criteria set forth in the Nonprofit Hospital
7 Sale Act. The attorney general may extend this ninety-day
8 period for an additional sixty days if the extension is
9 necessary to obtain information pursuant to Section 6 or 7 of
10 the Nonprofit Hospital Sale Act.

11 C. The attorney general shall not make a decision
12 based on any condition not reasonably related to the criteria
13 specified in Section 6 or 7 of the Nonprofit Hospital Sale
14 Act, and any condition or modification shall bear a direct and
15 rational relationship to the application under review.

16 D. The department shall review a completed
17 application and shall issue a written report of its findings
18 to the attorney general. The department's report shall be
19 based on the criteria set forth in Section 7 of the Nonprofit
20 Hospital Sale Act, and the report shall make a recommendation
21 to approve, with or without conditions, or disapprove the
22 application based on whether the application has met the
23 criteria set forth in Section 7 of that act.

24 Section 5. PUBLIC HEARING--DISCOVERY PROCEDURES.--

25 A. The attorney general shall hold at least one

underscored material = new
[bracketed material] = del ete

1 public hearing after providing by mail at least fourteen days'
2 notice to the parties to the transaction and any person who
3 has requested notice. The attorney general shall publish
4 notice of the public hearing in a newspaper of general
5 circulation in the service area of the nonprofit hospital at
6 least once each week for two weeks. At a public hearing, the
7 department shall appear and provide a statement or testimony
8 regarding the written report it has produced pursuant to
9 Subsection D of Section 4 of the Nonprofit Hospital Sale Act.
10 The attorney general may hold additional public hearings if:

11 (1) the application is substantially
12 modified, changed or amended after the public hearing;

13 (2) the department modifies its written
14 report or recommendation after the public hearing; or

15 (3) reports or findings made by any experts
16 or consultants retained by the attorney general or the
17 department are not completed until after the public hearing.

18 B. The attorney general may in his discretion hold
19 additional public hearings based on the size of the community
20 served by the nonprofit hospital and the complexity of the
21 acquisition. At the hearings, any person may file written
22 comments and exhibits or appear and make a statement, provided
23 that the comments, exhibits or statement are relevant to the
24 proposed acquisition. The attorney general may subpoena
25 additional information or witnesses, require and administer

underscored material = new
[bracketed material] = del ete

1 oaths, require sworn statements, take depositions and use
2 related discovery procedures for purposes of the hearing and
3 at any time prior to making a decision on the application.
4 The public hearing shall be held not later than sixty days
5 after receipt of a completed application.

6 Section 6. ATTORNEY GENERAL'S REVIEW - CRITERIA. --

7 A. Before approving an application, the attorney
8 general shall find that the proposed acquisition meets all of
9 the following criteria:

10 (1) the acquisition is in the public
11 interest;

12 (2) the acquisition is permitted by the
13 Nonprofit Corporation Act and other laws of New Mexico and the
14 United States;

15 (3) the nonprofit hospital exercised due
16 diligence in deciding to sell, selecting the purchaser and
17 negotiating the terms and conditions of the acquisition or
18 agreement;

19 (4) appropriate expert assistance was used by
20 the nonprofit hospital in making its decision;

21 (5) the acquisition will not result in a
22 breach of fiduciary duty, including conflicts of interest
23 related to the payments or benefits to officers, directors,
24 board members, executives and experts employed or retained by
25 the parties;

underscored material = new
[bracketed material] = delete

1 (6) the nonprofit hospital will receive fair
2 market value for its charitable assets. For the purposes of
3 this paragraph, "fair market value" means a likely or
4 reasonable price that the assets being sold would bring in a
5 competitive and open market under all conditions requisite to
6 a fair sale with the buyer and seller each acting prudently,
7 knowledgeably and in their own best interest, and with a
8 reasonable time being allowed for exposure in the open market.
9 To facilitate review of this criteria, the attorney general
10 shall review the independent valuation submitted by the
11 nonprofit hospital, and the attorney general shall use an
12 independent expert or consultant to review the nonprofit
13 hospital's valuation or conduct a separate valuation;

14 (7) public and charitable funds are not
15 placed at unreasonable risk;

16 (8) any management contract under the
17 acquisition is for reasonable consideration and fair value;

18 (9) the proceeds from the acquisition shall
19 be distributed to a successor nonprofit corporation that is
20 broadly based in and representative of the service area of the
21 nonprofit hospital being acquired, taking into consideration
22 the structure and governance of the acquiring entity;

23 (10) the proceeds from the acquisition shall
24 be used by the successor nonprofit corporation for appropriate
25 charitable health care purposes consistent with the original

underscored material = new
[bracketed material] = delete

1 purpose of the nonprofit hospital being acquired and for the
2 support and promotion of health care in the affected
3 community;

4 (11) the proceeds from the acquisition shall
5 be controlled by the successor nonprofit corporation as
6 charitable funds independent of the acquiring or related
7 entities;

8 (12) the successor nonprofit corporation
9 shall have a right of first refusal to repurchase the assets
10 on the same or better terms as that offered to or by another
11 if it is later contemplated that the hospital will be sold to,
12 acquired by or merged with another entity; and

13 (13) the attorney general has been provided
14 with sufficient information and data by the nonprofit hospital
15 to evaluate adequately the proposed acquisition or the effects
16 thereof on the public. In making this determination, the
17 attorney general shall notify the nonprofit hospital or the
18 acquiring person of any inadequacy of the information or data
19 and provide them a reasonable opportunity to remedy such
20 inadequacy.

21 B. The attorney general shall not approve an
22 application until the department has issued a favorable report
23 finding that the acquisition meets all of the criteria set
24 forth in Section 7 of the Nonprofit Hospital Sale Act.

25 Section 7. DEPARTMENT REVIEW CRITERIA. --

. 127684. 1

underscored material = new
[bracketed material] = delete

1 A. In reviewing an application, the department
2 shall determine the effect the proposed acquisition will have
3 on the availability, accessibility and affordability of health
4 services to the community served by the nonprofit hospital.
5 The department shall also consider the acquiring entity's
6 ability to maintain and improve health access and quality of
7 services.

8 B. In making this determination, the department
9 shall determine that the acquisition meets all of the
10 following criteria, in addition to any other factors deemed
11 relevant:

12 (1) the acquisition is in the public
13 interest;

14 (2) sufficient safeguards are included to
15 assure the affected community continued access to affordable
16 health care;

17 (3) the purchaser and parties to the
18 acquisition have made a commitment to provide health care to
19 the disadvantaged, the uninsured and the underinsured and to
20 provide benefits to the affected community to promote health
21 care;

22 (4) if health care providers will be offered
23 the opportunity to invest or own an interest in the purchaser
24 or an entity related to the purchaser, procedures or
25 safeguards are in place to avoid any conflict of interest in

underscored material = new
[bracketed material] = delete

1 patient referral and there is full disclosure of the nature of
2 these procedures or safeguards; and

3 (5) the acquisition will result in the
4 provision of essential medical services needed to provide safe
5 and adequate treatment, appropriate access and balanced health
6 care delivery to the residents of the hospital's service area.

7 Section 8. EXPERTS--ATTORNEY FEES.--

8 A. The attorney general and the department may
9 retain experts or consultants to assist in their review of a
10 proposed acquisition.

11 B. The nonprofit hospital shall, upon request, pay
12 the attorney general and the department promptly for all
13 expert, consultant and related acquisition review costs,
14 including reasonable attorney fees.

15 Section 9. LICENSURE--DENIAL, SUSPENSION OR
16 REVOCATION.--

17 A. The department may revoke, suspend, refuse to
18 renew or refuse to issue the license to operate a hospital or
19 may impose on a hospital any intermediate sanction and civil
20 monetary penalty provided in Section 24-1-5.2 NMSA 1978 after
21 notice and opportunity for a hearing provided in accordance
22 with Section 24-1-5 NMSA 1978 if:

23 (1) there is an acquisition of a hospital
24 without first having received the approval of the attorney
25 general pursuant to the Nonprofit Hospital Sale Act;

underscored material = new
[bracketed material] = delete

1 (2) there is an acquisition of a hospital and
2 there is a judicial determination that the acquisition is not
3 in the public interest; or

4 (3) the hospital is not fulfilling its
5 commitments pursuant to Sections 6 and 7 of the Nonprofit
6 Hospital Sale Act.

7 B. Hearings and appeals of department actions
8 pursuant to this section shall be taken in accordance with
9 Section 24-1-5 NMSA 1978.

10 Section 10. RULES.--The attorney general and the
11 department may adopt rules to implement the provisions of the
12 Nonprofit Hospital Sale Act.

13 Section 11. APPROPRIATION.--One hundred eighty-three
14 thousand dollars (\$183,000) is appropriated from the general
15 fund to the office of the attorney general for expenditure in
16 fiscal year 2000 for the purpose of carrying out the
17 provisions of the Nonprofit Hospital Sale Act. Any unexpended
18 or unencumbered balance remaining at the end of the fiscal
19 year 2000 shall revert to the general fund.

20 Section 12. EMERGENCY.--It is necessary for the public
21 peace, health and safety that this act take effect
22 immediately.

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 March 11, 1999

7
8 Mr. Speaker:

9
10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred

12
13 HOUSE BILL 863

14
15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
18 FOR HOUSE BILL 863

19
20 DO PASS, and thence referred to the APPROPRIATIONS AND
21 FINANCE COMMITTEE.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3 HBIC/HB 863

Page 14

4 Respectfully submitted,

8 _____
9 Debbie A. Rodella, Vice
10 Chairwoman

11
12 Adopted _____
13 (Chief Clerk)

Not Adopted _____
(Chief Clerk)

14
15 Date _____

16
17 The roll call vote was 6 For 5 Against

18 Yes: 6

19 No: Irwin, Kissner, Lutz, Mohorovic, T. Taylor

20 Excused: Hobbs

21 Absent: None

22 J:\99BillsWP\H0863

1 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
2 HOUSE BILL 863
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

4
5
6
7
8 AN ACT

9 RELATING TO HEALTH CARE; ENACTING THE NONPROFIT HOSPITAL SALE
10 ACT; ESTABLISHING PROCEDURES AND CRITERIA FOR REVIEW AND
11 APPROVAL OF CERTAIN HOSPITAL ACQUISITIONS; DECLARING AN
12 EMERGENCY.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
16 through 11 of this act may be cited as the "Nonprofit Hospital
17 Sale Act".

18 Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
19 Nonprofit Hospital Sale Act:

20 A. "acquire" or "acquisition" means the purchase
21 or ownership by a person of twenty percent or more of the
22 assets of a nonprofit hospital, whether by sale, purchase,
23 merger, conveyance, transfer, lease, gift, disposition or
24 otherwise, or the transfer of control of twenty percent or
25 more of the assets of a nonprofit hospital to another person
or that results in the acquiring person holding a fifty

1 percent or greater interest in the ownership of a nonprofit
2 hospital;

3 B. "department" means the department of health;

4 C. "nonprofit hospital" means a general or acute
5 care or specialty hospital licensed by the department that is
6 owned by a governmental entity or a person exempt from federal
7 income tax pursuant to Section 501(c)(3) of the federal
8 Internal Revenue Code of 1986; and

9 D. "person" means an individual, corporation,
10 partnership, association, joint venture, stock company,
11 insurance company or other legal entity that is organized on a
12 for-profit or pecuniary basis.

13 Section 3. [NEW MATERIAL] NONPROFIT HOSPITAL
14 ACQUISITION--APPLICATION FILING--APPROVAL REQUIRED.--

15 A. No person shall acquire a nonprofit hospital
16 without first applying for and receiving the approval of the
17 attorney general pursuant to the Nonprofit Hospital Sale Act.

18 B. The nonprofit hospital shall submit an
19 acquisition application to the attorney general and the
20 department in a format provided by the attorney general. The
21 application shall include:

- 22 (1) the name of the seller;
23 (2) the name of the purchaser or other
24 parties to the acquisition;
25 (3) the terms of the proposed acquisition or
agreement;
(4) the consideration to be paid;
(5) a copy of the acquisition agreement;

1 (6) a valuation report prepared by an
2 independent expert or consultant;

3 (7) a health impact analysis prepared by an
4 independent expert or consultant pursuant to the criteria set
5 forth in Section 7 of the Nonprofit Hospital Sale Act;

6 (8) a plan for the use of the net sale
7 proceeds from the acquisition; and

8 (9) disclosure of conflicts of interest,
9 including conflicts of interest related to board members of,
10 executives of and experts retained by the seller, purchaser or
11 other parties to the acquisition.

12 C. A copy of the application and copies of all
13 additional related materials shall be submitted to the
14 department and to the attorney general at the same time.
15 Applications and all related documents shall be public records
16 subject to all provisions of the Inspection of Public Records
17 Act and shall be made available at the offices of the attorney
18 general, the department and the nonprofit hospital.

19 D. If after receiving an application the attorney
20 general determines that the application is incomplete, the
21 attorney general may return the application to the applicant
22 or may request additions or changes to the application. All
23 deadlines are suspended during the time an application is
24 incomplete. Otherwise, all computations of time shall be
25 governed by the Rules of Civil Procedure for the District
26 Courts.

27 Section 4. [NEW MATERIAL] APPLICATION REVIEWS BY
28 ATTORNEY GENERAL AND DEPARTMENT OF HEALTH. --

underscored material = new
[bracketed material] = delete

1 A. Within five business days after receipt of a
2 completed application, the attorney general shall publish
3 notice of the application in a newspaper of general
4 circulation in the service area of the hospital once per week
5 for two weeks. In addition to this public notice, the
6 attorney general shall notify by mail any person who has
7 requested notice of the filing of applications pursuant to the
8 Nonprofit Hospital Sale Act. The notice shall state that a
9 completed application has been received, state the names of
10 the parties to the agreement and describe the contents of the
11 application.

12 B. Within sixty days of the receipt of a completed
13 application, the attorney general shall notify the nonprofit
14 hospital in writing of the decision either to approve the
15 acquisition, with or without any specific conditions or
16 modifications, or disapprove the acquisition subject to the
17 criteria set forth in the Nonprofit Hospital Sale Act. The
18 attorney general may extend this sixty-day period for an
19 additional sixty days if the extension is necessary to obtain
20 information pursuant to Section 6 or 7 of the Nonprofit
21 Hospital Sale Act.

22 C. The attorney general shall not make a decision
23 based on any condition not reasonably related to the criteria
24 specified in Section 6 or 7 of the Nonprofit Hospital Sale
25 Act, and any condition or modification shall bear a direct and
rational relationship to the application under review.

 D. The department shall review a completed
application and shall issue a written report of its findings

1 to the attorney general. The department's report shall be
 2 based on the criteria set forth in Section 7 of the Nonprofit
 3 Hospital Sale Act, and the report shall make a recommendation
 4 to approve, with or without conditions, or disapprove the
 5 application based on whether the application has met the
 6 criteria set forth in Section 7 of that act.

7 Section 5. [NEW MATERIAL] PUBLIC HEARING. -- The attorney
 8 general shall hold at least one public hearing after providing
 9 by mail at least fourteen days' notice to the parties to the
 10 transaction and any person who has requested notice. The
 11 attorney general shall publish notice of the public hearing in
 12 a newspaper of general circulation in the service area of the
 13 nonprofit hospital at least once each week for two weeks. At
 14 a public hearing, the department shall appear and provide a
 15 statement or testimony regarding the written report it has
 16 produced pursuant to Subsection D of Section 4 of the
 17 Nonprofit Hospital Sale Act. The attorney general may hold an
 18 additional public hearing after consultation with the parties.
 19 At the hearings, any person may file written comments and
 20 exhibits or appear and make a statement, provided that the
 21 comments, exhibits or statement are relevant to the proposed
 22 acquisition. The public hearing shall be held not later than
 23 forty days after receipt of a completed application.

24 Section 6. [NEW MATERIAL] ATTORNEY GENERAL'S REVIEW -
 25 CRITERIA. --

A. Before approving an application, the attorney
 general shall find that the proposed acquisition meets all of
 the following criteria:

underscored material = new
 [bracketed material] = delete

1 (1) the terms and conditions of the agreement
2 or acquisition are fair and reasonable;

3 (2) the agreement or acquisition will not
4 result in inurement to any private person or entity other than
5 the purchaser and will not result in the breach of any
6 fiduciary duty;

7 (3) the nonprofit hospital will receive fair
8 market value for its charitable assets. For the purpose of
9 this paragraph, "fair market value" means a likely price that
10 the assets being sold would bring in a competitive and open
11 market under all conditions requisite to a fair sale, the
12 buyer and seller, each acting prudently, knowledgeably and in
13 his own best interest and a reasonable time being allowed for
14 exposure in the open market. To facilitate review of this
15 criteria, the attorney general shall review the independent
16 valuation submitted by the nonprofit hospital, and the
17 attorney general shall use an independent expert or consultant
18 to review the nonprofit hospital's valuation or conduct in a
19 separate valuation;

20 (4) the market value has not been manipulated
21 by the actions of the parties in a manner that causes the
22 value of the assets to decrease;

23 (5) the net sale proceeds will be used in New
24 Mexico for appropriate charitable or other health care
25 purposes consistent with the seller's original purpose as
defined in the seller's articles of incorporation or for
support and promotion of health care in the affected
community;

1 (6) conflicts of interest were disclosed,
2 including conflicts of interest related to board members of,
3 executives of and experts retained by the seller, purchaser or
4 other parties to the acquisition; and

5 (7) appropriate steps have been taken to
6 safeguard the value of charitable or public assets and ensure
7 that the net sale proceeds of the transactions are used for
8 appropriate charitable or other health care purposes.

9 B. The attorney general shall not approve an
10 application until the department has issued a favorable report
11 finding that the acquisition meets all of the criteria set
12 forth in Section 7 of the Nonprofit Hospital Sale Act. The
13 attorney general shall not approve an application unless the
14 obligations set forth in Section 8 of that act are agreed
15 upon.

16 Section 7. [NEW MATERIAL] DEPARTMENT REVIEW CRITERIA. --

17 A. In reviewing an application, the department
18 shall determine the effect the proposed acquisition will have
19 on the availability, accessibility and affordability of health
20 services to the community served by the nonprofit hospital.
21 The department shall also consider the acquiring entity's
22 ability to maintain and improve health access and quality of
23 services.

24 B. In making this determination, the department
25 shall determine that the acquisition meets all of the
26 following criteria:

(1) sufficient safeguards are included to
assure the affected community continued access to health care;

underscored material = new
[bracketed material] = delete

1 (2) the purchaser and parties to the
2 acquisition have made a commitment to provide health care to
3 the disadvantaged, the uninsured and the underinsured and to
4 provide benefits to the affected community to promote health
5 care; and

6 (3) the acquisition will not result in a
7 reduction in the level of health care services provided by the
8 existing owner or operator; provided, however, that changes in
9 the local health care market conditions or economy shall also
be considered.

10 Section 8. [NEW MATERIAL] EXPERTS--ATTORNEY FEES. --

11 A. The attorney general and the department may
12 retain experts or consultants to assist in their review of a
13 proposed acquisition.

14 B. The nonprofit hospital shall, upon request, pay
15 the attorney general and the department promptly for all
16 expert, consultant and related acquisition review costs,
17 including reasonable attorney fees. All costs and fees will
18 be fair and reasonable and will be determined in consultation
19 with the nonprofit hospital.

20 Section 9. [NEW MATERIAL] LICENSURE--DENIAL, SUSPENSION
21 OR REVOCATION. --

22 A. The department may revoke, suspend, refuse to
23 renew or refuse to issue the license to operate a hospital or
24 may impose on a hospital any intermediate sanction and civil
25 monetary penalty provided in Section 24-1-5.2 NMSA 1978 after
notice and opportunity for a hearing provided in accordance
with Section 24-1-5 NMSA 1978 if:

1 (1) there is an acquisition of a hospital
2 without first having received the approval of the attorney
3 general pursuant to the Nonprofit Hospital Sale Act;

4 (2) there is an acquisition of a hospital and
5 there is a judicial determination that the acquisition is not
6 in the public interest; or

7 (3) the hospital is not fulfilling its
8 commitments pursuant to Sections 6 and 7 of the Nonprofit
9 Hospital Sale Act.

10 B. Hearings and appeals of department actions
11 pursuant to this section shall be taken in accordance with
12 Section 24-1-5 NMSA 1978.

13 Section 10. [NEW MATERIAL] RULES.--The attorney general
14 and the department may adopt rules to implement the provisions
15 of the Nonprofit Hospital Sale Act.

16 Section 11. [NEW MATERIAL] EXEMPTION FROM OTHER
17 APPROVALS.--If the seller is a local public body, as that term
18 is defined in Subsection A of Section 13-6-4 NMSA 1978, the
19 provisions of Section 13-6-2.1 NMSA 1978 do not apply to a
20 transaction subject to the Nonprofit Hospital Sale Act.

21 Section 12. Section 13-6-2.1 NMSA 1978 (being Laws 1989,
22 Chapter 380, Section 1) is amended to read:

23 "13-6-2.1. LEASES-- BOARD OF FINANCE APPROVAL. --

24 A. Any sale, trade or lease for a period of more
25 than five years but less than twenty-five years in duration of
real property belonging to any state agency, local public
body, school district or state educational institution or any
sale, trade or lease of such real property for a consideration

underscored material = new
[bracketed material] = delete

1 of more than twenty-five thousand dollars (\$25,000) but less
2 than one hundred thousand dollars (\$100,000) shall not be
3 valid unless it is approved prior to its effective date by the
4 state board of finance.

5 B. The provisions of this section [~~shall not be~~
6 ~~applicable as~~] do not apply to those institutions specifically
7 enumerated in Article 12, Section 11 of the constitution of
8 New Mexico, the state land office [~~or~~], the state highway
9 commission or to transactions subject to the provisions of the
10 Nonprofit Hospital Sale Act. "

11 Section 13. EMERGENCY.--It is necessary for the public
12 peace, health and safety that this act take effect
13 immediately.

underscored material = new
[bracketed material] = delete

1 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
2 HOUSE BILL 863
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

4
5
6
7
8 AN ACT

9 RELATING TO HEALTH CARE; ENACTING THE NONPROFIT HOSPITAL SALE
10 ACT; ESTABLISHING PROCEDURES AND CRITERIA FOR REVIEW AND
11 APPROVAL OF CERTAIN HOSPITAL ACQUISITIONS; DECLARING AN
12 EMERGENCY.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
16 through 11 of this act may be cited as the "Nonprofit Hospital
17 Sale Act".

18 Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
19 Nonprofit Hospital Sale Act:

20 A. "acquire" or "acquisition" means the purchase
21 or ownership by a person of twenty percent or more of the
22 assets of a nonprofit hospital, whether by sale, purchase,
23 merger, conveyance, transfer, lease, gift, disposition or
24 otherwise, or the transfer of control of twenty percent or
25 more of the assets of a nonprofit hospital to another person
or that results in the acquiring person holding a fifty

1 percent or greater interest in the ownership of a nonprofit
2 hospital;

3 B. "department" means the department of health;

4 C. "nonprofit hospital" means a general or acute
5 care or specialty hospital licensed by the department that is
6 owned by a governmental entity or a person exempt from federal
7 income tax pursuant to Section 501(c)(3) of the federal
8 Internal Revenue Code of 1986; and

9 D. "person" means an individual, corporation,
10 partnership, association, joint venture, stock company,
11 insurance company or other legal entity that is organized on a
12 for-profit or pecuniary basis.

13 Section 3. [NEW MATERIAL] NONPROFIT HOSPITAL
14 ACQUISITION--APPLICATION FILING--APPROVAL REQUIRED.--

15 A. No person shall acquire a nonprofit hospital
16 without first applying for and receiving the approval of the
17 attorney general pursuant to the Nonprofit Hospital Sale Act.

18 B. The nonprofit hospital shall submit an
19 acquisition application to the attorney general and the
20 department in a format provided by the attorney general. The
21 application shall include:

- 22 (1) the name of the seller;
- 23 (2) the name of the purchaser or other
24 parties to the acquisition;
- 25 (3) the terms of the proposed acquisition or
agreement;
- (4) the consideration to be paid;
- (5) a copy of the acquisition agreement;

underscored material = new
[bracketed material] = delete

1 (6) a valuation report prepared by an
2 independent expert or consultant;

3 (7) a health impact analysis prepared by an
4 independent expert or consultant pursuant to the criteria set
5 forth in Section 7 of the Nonprofit Hospital Sale Act;

6 (8) a plan for the use of the net sale
7 proceeds from the acquisition; and

8 (9) disclosure of conflicts of interest,
9 including conflicts of interest related to board members of,
10 executives of and experts retained by the seller, purchaser or
11 other parties to the acquisition.

12 C. A copy of the application and copies of all
13 additional related materials shall be submitted to the
14 department and to the attorney general at the same time.
15 Applications and all related documents shall be public records
16 subject to all provisions of the Inspection of Public Records
17 Act and shall be made available at the offices of the attorney
18 general, the department and the nonprofit hospital.

19 D. If after receiving an application the attorney
20 general determines that the application is incomplete, the
21 attorney general may return the application to the applicant
22 or may request additions or changes to the application. All
23 deadlines are suspended during the time an application is
24 incomplete. Otherwise, all computations of time shall be
25 governed by the Rules of Civil Procedure for the District
26 Courts.

27 Section 4. [NEW MATERIAL] APPLICATION REVIEWS BY
28 ATTORNEY GENERAL AND DEPARTMENT OF HEALTH. --

underscored material = new
[bracketed material] = delete

1 A. Within five business days after receipt of a
2 completed application, the attorney general shall publish
3 notice of the application in a newspaper of general
4 circulation in the service area of the hospital once per week
5 for two weeks. In addition to this public notice, the
6 attorney general shall notify by mail any person who has
7 requested notice of the filing of applications pursuant to the
8 Nonprofit Hospital Sale Act. The notice shall state that a
9 completed application has been received, state the names of
10 the parties to the agreement and describe the contents of the
11 application.

12 B. Within sixty days of the receipt of a completed
13 application, the attorney general shall notify the nonprofit
14 hospital in writing of the decision either to approve the
15 acquisition, with or without any specific conditions or
16 modifications, or disapprove the acquisition subject to the
17 criteria set forth in the Nonprofit Hospital Sale Act. The
18 attorney general may extend this sixty-day period for an
19 additional sixty days if the extension is necessary to obtain
20 information pursuant to Section 6 or 7 of the Nonprofit
21 Hospital Sale Act.

22 C. The attorney general shall not make a decision
23 based on any condition not reasonably related to the criteria
24 specified in Section 6 or 7 of the Nonprofit Hospital Sale
25 Act, and any condition or modification shall bear a direct and
rational relationship to the application under review.

 D. The department shall review a completed
application and shall issue a written report of its findings

1 to the attorney general. The department's report shall be
 2 based on the criteria set forth in Section 7 of the Nonprofit
 3 Hospital Sale Act, and the report shall make a recommendation
 4 to approve, with or without conditions, or disapprove the
 5 application based on whether the application has met the
 6 criteria set forth in Section 7 of that act.

7 Section 5. [NEW MATERIAL] PUBLIC HEARING. -- The attorney
 8 general shall hold at least one public hearing after providing
 9 by mail at least fourteen days' notice to the parties to the
 10 transaction and any person who has requested notice. The
 11 attorney general shall publish notice of the public hearing in
 12 a newspaper of general circulation in the service area of the
 13 nonprofit hospital at least once each week for two weeks. At
 14 a public hearing, the department shall appear and provide a
 15 statement or testimony regarding the written report it has
 16 produced pursuant to Subsection D of Section 4 of the
 17 Nonprofit Hospital Sale Act. The attorney general may hold an
 18 additional public hearing after consultation with the parties.
 19 At the hearings, any person may file written comments and
 20 exhibits or appear and make a statement, provided that the
 21 comments, exhibits or statement are relevant to the proposed
 22 acquisition. The public hearing shall be held not later than
 23 forty days after receipt of a completed application.

24 Section 6. [NEW MATERIAL] ATTORNEY GENERAL'S REVIEW -
 25 CRITERIA. --

26 A. Before approving an application, the attorney
 27 general shall find that the proposed acquisition meets all of
 28 the following criteria:

underscored material = new
 [bracketed material] = delete

1 (1) the terms and conditions of the agreement
2 or acquisition are fair and reasonable;

3 (2) the agreement or acquisition will not
4 result in inurement to any private person or entity other than
5 the purchaser and will not result in the breach of any
6 fiduciary duty;

7 (3) the nonprofit hospital will receive fair
8 market value for its charitable assets. For the purpose of
9 this paragraph, "fair market value" means a likely price that
10 the assets being sold would bring in a competitive and open
11 market under all conditions requisite to a fair sale, the
12 buyer and seller, each acting prudently, knowledgeably and in
13 his own best interest and a reasonable time being allowed for
14 exposure in the open market. To facilitate review of this
15 criteria, the attorney general shall review the independent
16 valuation submitted by the nonprofit hospital, and the
17 attorney general shall use an independent expert or consultant
18 to review the nonprofit hospital's valuation or conduct in a
19 separate valuation;

20 (4) the market value has not been manipulated
21 by the actions of the parties in a manner that causes the
22 value of the assets to decrease;

23 (5) the net sale proceeds will be used in New
24 Mexico for appropriate charitable or other health care
25 purposes consistent with the seller's original purpose as
defined in the seller's articles of incorporation or for
support and promotion of health care in the affected
community;

1 (6) conflicts of interest were disclosed,
2 including conflicts of interest related to board members of,
3 executives of and experts retained by the seller, purchaser or
4 other parties to the acquisition; and

5 (7) appropriate steps have been taken to
6 safeguard the value of charitable or public assets and ensure
7 that the net sale proceeds of the transactions are used for
8 appropriate charitable or other health care purposes.

9 B. The attorney general shall not approve an
10 application until the department has issued a favorable report
11 finding that the acquisition meets all of the criteria set
12 forth in Section 7 of the Nonprofit Hospital Sale Act. The
13 attorney general shall not approve an application unless the
14 obligations set forth in Section 8 of that act are agreed
15 upon.

16 Section 7. [NEW MATERIAL] DEPARTMENT REVIEW CRITERIA. --

17 A. In reviewing an application, the department
18 shall determine the effect the proposed acquisition will have
19 on the availability, accessibility and affordability of health
20 services to the community served by the nonprofit hospital.
21 The department shall also consider the acquiring entity's
22 ability to maintain and improve health access and quality of
23 services.

24 B. In making this determination, the department
25 shall determine that the acquisition meets all of the
26 following criteria:

(1) sufficient safeguards are included to
assure the affected community continued access to health care;

underscored material = new
[bracketed material] = delete

1 (2) the purchaser and parties to the
2 acquisition have made a commitment to provide health care to
3 the disadvantaged, the uninsured and the underinsured and to
4 provide benefits to the affected community to promote health
5 care; and

6 (3) the acquisition will not result in a
7 reduction in the level of health care services provided by the
8 existing owner or operator; provided, however, that changes in
9 the local health care market conditions or economy shall also
10 be considered.

11 Section 8. [NEW MATERIAL] EXPERTS--ATTORNEY FEES. --

12 A. The attorney general and the department may
13 retain experts or consultants to assist in their review of a
14 proposed acquisition.

15 B. The nonprofit hospital shall, upon request, pay
16 the attorney general and the department promptly for all
17 expert, consultant and related acquisition review costs,
18 including reasonable attorney fees. All costs and fees will
19 be fair and reasonable and will be determined in consultation
20 with the nonprofit hospital.

21 Section 9. [NEW MATERIAL] LICENSURE--DENIAL, SUSPENSION
22 OR REVOCATION. --

23 A. The department may revoke, suspend, refuse to
24 renew or refuse to issue the license to operate a hospital or
25 may impose on a hospital any intermediate sanction and civil
monetary penalty provided in Section 24-1-5.2 NMSA 1978 after
notice and opportunity for a hearing provided in accordance
with Section 24-1-5 NMSA 1978 if:

1 (1) there is an acquisition of a hospital
2 without first having received the approval of the attorney
3 general pursuant to the Nonprofit Hospital Sale Act;

4 (2) there is an acquisition of a hospital and
5 there is a judicial determination that the acquisition is not
6 in the public interest; or

7 (3) the hospital is not fulfilling its
8 commitments pursuant to Sections 6 and 7 of the Nonprofit
9 Hospital Sale Act.

10 B. Hearings and appeals of department actions
11 pursuant to this section shall be taken in accordance with
12 Section 24-1-5 NMSA 1978.

13 Section 10. [NEW MATERIAL] RULES.--The attorney general
14 and the department may adopt rules to implement the provisions
15 of the Nonprofit Hospital Sale Act.

16 Section 11. [NEW MATERIAL] EXEMPTION FROM OTHER
17 APPROVALS.--If the seller is a local public body, as that term
18 is defined in Subsection A of Section 13-6-4 NMSA 1978, the
19 provisions of Section 13-6-2.1 NMSA 1978 do not apply to a
20 transaction subject to the Nonprofit Hospital Sale Act.

21 Section 12. Section 13-6-2.1 NMSA 1978 (being Laws 1989,
22 Chapter 380, Section 1) is amended to read:

23 "13-6-2.1. LEASES-- BOARD OF FINANCE APPROVAL. --

24 A. Any sale, trade or lease for a period of more
25 than five years but less than twenty-five years in duration of
real property belonging to any state agency, local public
body, school district or state educational institution or any
sale, trade or lease of such real property for a consideration

underscored material = new
[bracketed material] = delete

1 of more than twenty-five thousand dollars (\$25,000) but less
2 than one hundred thousand dollars (\$100,000) shall not be
3 valid unless it is approved prior to its effective date by the
4 state board of finance.

5 B. The provisions of this section [~~shall not be~~
6 ~~applicable as~~] do not apply to those institutions specifically
7 enumerated in Article 12, Section 11 of the constitution of
8 New Mexico, the state land office [~~or~~], the state highway
9 commission or to transactions subject to the provisions of the
10 Nonprofit Hospital Sale Act. "

11 Section 13. EMERGENCY.--It is necessary for the public
12 peace, health and safety that this act take effect
13 immediately.

underscored material = new
[bracketed material] = delete

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3

4 March 16, 1999
5

6
7 Mr. Speaker:
8

9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE
12 FOR HOUSE BILL 863
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:
16

17 1. On page 7, line 8, strike "in".

18 2. On page 8, line 19, following "criteria", insert
19 "taking into consideration changes in the local health care
20 market conditions or economy".
21

22 3. On page 9, line 4, strike the semicolon, insert in
23 lieu thereof a period, strike the remainder of the line and
24 strike lines 5 and 6.
25

4. On page 10, strike lines 15 through 25 and strike

. 128951. 2

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HB 863

HAFIC/HBIC/HB 863

lines 1 through 12 on page 11.

5. On page 11, between lines 12 and 13, insert the following new sections:

"Section 13. NONPROFIT HOSPITALS OWNED BY A GOVERNMENTAL ENTITY-- WAIVER OF REVIEW PROCESS REQUIREMENT. -- Nonprofit hospitals that are owned by a governmental entity shall receive a waiver of the requirement of review by the attorney general if the governmental entity certifies to the attorney general that the sale of the nonprofit hospital will otherwise satisfy all of the criteria in Sections 3, 5 and 6 of the Nonprofit Hospital Sale Act. The department shall provide the governmental entity with its written report pursuant to Section 7 of the Nonprofit Hospital Sale Act.

Section 14. NONPROFIT HOSPITALS OWNED BY A GOVERNMENTAL ENTITY-- USE OF NET SALE PROCEEDS FROM ACQUISITION. -- A governmental entity shall maintain the net sale proceeds from an acquisition of a nonprofit hospital owned by the governmental entity in a dedicated fund for at least five years. The interest from the dedicated fund shall be used only for health care related purposes. After five years, the net sale proceeds from the acquisition and any accumulated interest may be released from the dedicated fund and may be used for other

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HAFB/HBIC/HB 863

Page 37

4 essential governmental purposes only after the governmental
5 entity:

6
7 A. conducts at least one public hearing to solicit
8 public input into whether the net sale proceeds should be used
9 for purposes other than health care;

10 B. determines that the present and future health
11 care needs of the affected community are being met;

12
13 C. determines whether there is a need for retaining
14 all or part of the net sale proceeds in the dedicated fund for
15 the support and promotion of health care in the affected
16 community; and

17 D. determines that all or part of the net sale
18 proceeds are necessary to fund other essential governmental
19 services. "

20
21 6. Renumber the succeeding section accordingly.
22
23
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HB 863

HAFIC/HBIC/HB 863

Page 38

Respectfully submitted,

Max Coll, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HAFIC/HBIC/HB 863

Page 39

4 The roll call vote was 12 For 2 Against

5 Yes: 12

6 No: Coll, Heaton

7 Excused: Abeyta, Pearce, Watchman

8 Absent: None

11 . 129096. 2

12 . 129095. 2

13 J: \99BillSWP\H0863

25 . 128951. 2

underscored material = new
[bracketed material] = delete

1
2 **HBIC/HB 863**

3
4 **FORTY-FOURTH LEGISLATURE**
5 **FIRST SESSION, 1999**
6

7 **March 16, 1999**
8

9
10 **Mr. Speaker:**
11

12 **Your APPROPRIATIONS AND FINANCE COMMITTEE, to**
13 **whom has been referred**

14 **HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE**
15 **FOR HOUSE BILL 863**
16

17 **has had it under consideration and reports same with**
18 **recommendation that it DO PASS, amended as follows:**

- 19
- 20 **1. On page 7, line 8, strike "in".**
 - 21
 - 22 **2. On page 8, line 19, following "criteria", insert**
23 **"taking into consideration changes in the local health care**
24 **market conditions or economy".**
 - 25 **3. On page 9, line 4, strike the semicolon, insert in**

. 128951. 2

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HARC/HBIC/HB 863

Page 41

4 lieu thereof a period, strike the remainder of the line and
5 strike lines 5 and 6.

6
7 4. On page 10, strike lines 15 through 25 and strike
8 lines 1 through 12 on page 11.

9
10 5. On page 11, between lines 12 and 13, insert the
11 following new sections:

12 "Section 13. NONPROFIT HOSPITALS OWNED BY A GOVERNMENTAL
13 ENTITY-- WAIVER OF REVIEW PROCESS REQUIREMENT. -- Nonprofit
14 hospitals that are owned by a governmental entity shall receive
15 a waiver of the requirement of review by the attorney general if
16 the governmental entity certifies to the attorney general that
17 the sale of the nonprofit hospital will otherwise satisfy all of
18 the criteria in Sections 3, 5 and 6 of the Nonprofit Hospital
19 Sale Act. The department shall provide the governmental entity
20 with its written report pursuant to Section 7 of the Nonprofit
21 Hospital Sale Act.

22 Section 14. NONPROFIT HOSPITALS OWNED BY A GOVERNMENTAL
23 ENTITY-- USE OF NET SALE PROCEEDS FROM ACQUISITION. -- A
24 governmental entity shall maintain the net sale proceeds from an
25 acquisition of a nonprofit hospital owned by the governmental
entity in a dedicated fund for at least five years. The

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HB 863

HAFIC/HBIC/HB 863

Page 42

interest from the dedicated fund shall be used only for health care related purposes. After five years, the net sale proceeds from the acquisition and any accumulated interest may be released from the dedicated fund and may be used for other essential governmental purposes only after the governmental entity:

A. conducts at least one public hearing to solicit public input into whether the net sale proceeds should be used for purposes other than health care;

B. determines that the present and future health care needs of the affected community are being met;

C. determines whether there is a need for retaining all or part of the net sale proceeds in the dedicated fund for the support and promotion of health care in the affected community; and

D. determines that all or part of the net sale proceeds are necessary to fund other essential governmental services. "

6. Renumber the succeeding section accordingly.

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 **HARC/HBIC/HB 863**

Page 43

4 **Respectfully submitted,**

8 _____
9
10 Max Coll, Chairman

12 **Adopted** _____

Not Adopted _____

14 (Chief Clerk)

(Chief Clerk)

16 **Date** _____

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HBIC/HB 863

HAFIC/HBIC/HB 863

Page 44

The roll call vote was 12 For 2 Against

Yes: 12

No: Coll, Heaton

Excused: Abeyta, Pearce, Watchman

Absent: None

. 129096. 2

. 129095. 2

J:\99Bill\SWP\H0863

. 128951. 2

underscored material = new
[bracketed material] = delete